WEST VIRGINIA CODE: §21A-5-10C

§21A-5-10c. Special rules regarding transfers of experience and assignment of rates.

Notwithstanding any other provision of law to the contrary, the following shall apply regarding assignment of rates and transfers of experience:

(a) (1) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the two employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated and made effective immediately upon the date of the transfer of trade or business. The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of trade or business when, as a result of such transfer, the transferring employer no longer performs the trade or business with respect to the transferred workforce, and such trade or business is performed by the employer to whom the workforce is transferred.

(2) If, following a transfer of experience under paragraph (1) of this section, the Commissioner determines that a substantial purpose of the transfer of trade or business was to obtain a reduced liability for contributions, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate assigned to such account.

(b) Whenever a person who is not an employer, as defined in section fifteen, article one-a of this chapter, at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business shall not be transferred to such person if the Commissioner or his or her representative finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, such person shall be assigned the applicable new employer rate under section five of this article. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the Commissioner or his or her representative shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(c) (1) If a person knowingly violates or attempts to violate subsection (a) or (b) of this section or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of such provision, the person shall be subject to the following penalties:

(A) If the person is an employer, then such employer shall be assigned the highest rate

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assignable under this chapter for the rate year during which such violation or attempted violation occurred and the three rate years immediately following this rate year. However, if the person's business is already at the highest rate for any year, or if the amount of increase in the person's rate would be less than two percent for that year, then a penalty rate of contributions of two percent of taxable wages shall be imposed for that year.

(B) If the person is not an employer, that person shall be subject to a civil money penalty of not more than $5,000. Any fine collected pursuant to this paragraph shall be deposited in the Special Administrative Fund Account established under section five-a, article nine of this chapter.

(2) For purposes of this section, the term "knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(3) For purposes of this section, the term "violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure.

(4) In addition to the penalty imposed by paragraph (1) of this subsection, any violation of this chapter may be prosecuted as a misdemeanor under section ten, article ten of this chapter.

(d) The Commissioner shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

(e) For purposes of this section:

(1) "Person" has the meaning given such term by section 7701(a)(1) of the Internal Revenue Code of 1986; and

(2) "Trade or business" shall include the employer's workforce.

(f) This section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor in effect at the time this section becomes law.

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